



Silver Bow Creek Butte Area Mine Flooding Operable Unit

**Bankruptcy Proceeding and Settlement
effects on the Consent Decree**

February 2008

ASARCO's bankruptcy settlement agreement will affect the Butte Mine Flooding Operable Unit (Berkeley Pit) Consent Decree

The notice of the settlement agreement, and the settlement agreement itself, has been filed with Judge Haddon of the Federal District Court of Montana for approval. A 30-day period for public comment begins on February 15, 2008.

ASARCO is in bankruptcy and is no longer an owner at the Site. A claim of \$8.6 million is made against ASARCO in the settlement agreement. It also removes ASARCO as a party to the CD. The other PRPs remain responsible for the cleanup, which does not change.

- **The water treatment plant will continue to operate**
- **Run-off water will be collected and treated**
- **Ground water monitoring will continue**
- **The education program will continue**

The motion and settlement agreement can be found at:

U.S. EPA Butte Office 155 Granite Ave. 406-782-7415	U.S. EPA Records Center Helena Office 10 W. 15th St.; Suite 3200 406-457-5046
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It is also on EPA's web site at:

www.epa.gov/region8/superfund/mt/sbcbutte

Mine Flooding Cleanup Plan

The Mine Flooding (MF) Operable Unit consists of the deep aquifer in and around Butte, including the very contaminated water in the Berkeley Pit open-pit mine. It also includes run-off waters surrounding the Berkeley Pit from the active mine operation. In August 2002, EPA, MDEQ, and six responsible parties entered into a Consent Decree (CD). The CD required the responsible parties to implement the MF cleanup plan.

The cleanup includes a state-of-the-art water treatment plant completed in 2004 that treats contaminated run-off water from the active mine site. The treated water is re-used in the nearby Montana Resources mining operation. The treated water may be discharged to Silver Bow Creek in the future.

In about 13 years (2021) the plant will also begin treating contaminated water from the Berkeley Pit. Pit water must be pumped and treated to maintain the Critical Water Level in the Pit as the lowest point in the system so the surrounding groundwater in the alluvial (upper) aquifer continues to flow into the Pit. This will protect the surrounding alluvial aquifer and Silver Bow Creek.

Institutional controls for the bedrock aquifer include a well ban and an ongoing education program.

Bankruptcy Settlement Summary

The Mine Flooding Operable Unit Consent Decree was signed in 2002 by ASARCO, along with Atlantic Richfield the Montana Resources (MR) group (Montana Resources, Montana Resources Incorporated, and Dennis Washington), and a partnership between MR and ASARCO.

In 2004, ASARCO lost its ownership interest in the partnership which owned the site. MR became the sole owner of the site. Nevertheless, ASARCO remained liable as a signatory under the CD.

In August 2005, ASARCO filed for bankruptcy protection in Texas under the federal bankruptcy laws. ASARCO sought to get rid of its obligations under the MF CD. The United States and the State filed claims in bankruptcy court, arguing against this. MR also filed claims against ASARCO in the bankruptcy proceeding, for ASARCO's share of past and future costs and on behalf of Atlantic Richfield for certain site costs.

The bankruptcy court in Texas ordered all parties to be prepared to go to a hearing in November 2007 regarding these issues. He also ordered all parties to participate in settlement discussions prior to the hearing. The court ordered settlement discussions have produced a settlement among ASARCO, MR, the US, and the State.

The Settlement Agreement allows for a claim of \$8.6 million against ASARCO in bankruptcy court. If the claim is paid at the end of the bankruptcy proceeding, the money will be placed in an escrow account managed by MR. The escrow money can be used solely for site cleanup. Atlantic Richfield does not object to this plan. MR is allowed other claims against ASARCO in the Settlement Agreement.

The Texas bankruptcy court must determine how much of these claims ASARCO will be able to afford to pay under a reorganization plan. It is expected that most of claims paid in full under the reorganization plan since ASARCO currently has several valuable assets. It is possible however, that the final cash amount will be less than the total amount of the claims in the proposed settlement.

This settlement has been approved by the Texas bankruptcy court judge. Judge Haddon in the Federal District Court of Montana must now also approve it before it goes forward. The US Department of Justice has filed the settlement, and will put a public notice in the federal register seeking comments on the settlement. The US DOJ will consult with EPA and the State on any comments it receives and respond to comments before asking Judge Haddon to approve the settlement agreement. If the comments cause DOJ to re-assess the settlement, the US could go back to MR and ASARCO to continue negotiating changes in the settlement agreement.

CONTACTS and INFORMATION

For information regarding the settlement:

Henry Elsen, Site Attorney
406-457-5030

General Questions or Concerns

Wendy Thomi - Community Involvement
Toll free 1-866-457-2690

Comments on the settlement agreement should be submitted by March 17 through the mail to:

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

**Ref: ASARCO LLC Bankruptcy,
Butte Mine Flooding Site
DOJ Ref # 90-11-3-08633**

Or through e-mail to:

Pubcomment-ees.enrd@usdoj.gov
With the same reference as above.

**Visit EPA's Silver Bow Creek –
Butte Area Web site at:**

[www.epa.gov/region8/superfund/mt/
sbcbutte](http://www.epa.gov/region8/superfund/mt/sbcbutte)